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JAN NORMAN ON SMALL BUSINESS

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Court voids 1,550% tax hike on some malt liquor

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A state appeals court has struck down a 1,550% increase in excise tax on certain flavored malt beverages such as hard lemonade, hard ice tea and Smirnoff Ice.

These beverages have some characteristics of beer and some of distilled spirits, the court noted.

The Board of Equalization in 2008 approved a $3.30 a gallon tax, up from 20 cents a gallon on flavored malt beverages at the urging of the California Friday Night Live Partnership, Students making a community Change and the California Youth Council.

Diageo-Guinness USA Inc. in Connecticut and the Flavored Malt Beverage Coalition sued to block the change, saying the Department of Alcoholic Beverage Control has exclusive power over sale and taxation of alcohol, not the Board of Equalization. A trial court previously sided with the board.

The appeals court ruled that the board's attempt to change the definition of "distilled spirits" did not withstand even the "relaxed scrutiny" that a court gives to quasi-legislative actions such as regulations.

The board is considering whether to appeal the ruling, a spokesman said.

The decision could also affect a similar board regulation, passed in 2011, that redefined certain wines as distilled spirits and increased the excise tax on

flavored wines and wine coolers 1,550% too. That regulation has not been reviewed by the courts.

When the malt liquor tax increase was passed, the board estimated that it would raise $41 million in revenue for the state. However, Board of Equalization member Michelle Steel, who represents Orange County, said little revenue was raised because producers reformulated their drinks.

“Instead, the state wasted millions of taxpayers’ dollars on this pointless and illegal effort,” said Steel, who cast the only vote against the increase. “Since 2007, I have fought the agency’s attempts to change the long-standing definition of products to raise tax revenue. The agency’s decision was wrong from the start, and the Court has proved it.”

Click here to read the appeals court ruling.